

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

KENNETH WAYNE DAVIS,

Defendant/Movant.

Cause No. CR 14-11-GF-BMM

ORDER

This case comes before the Court on Defendant/Movant Davis's motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. Davis is a federal prisoner proceeding pro se.

Davis asks the Court to reduce his sentence by applying the current version of U.S.S.G. § 3B1.2 to his sentencing guideline calculation. For the reasons explained in the Order of December 14, 2016 (Doc. 47), Davis cannot obtain a reduction. In addition, the amendment to § 3B1.2 essentially adopted the law of the Ninth Circuit as it existed on the date of Davis's sentencing. *See United States v. Quintero-Leyva*, 823 F.3d 519, 523 (9th Cir. 2016). There is no reason to think Davis's sentence would be affected by the Sentencing Commission's clarification. Finally, Davis has already litigated a § 2255 motion to completion. *See Mot. § 2255* (Doc. 34); Order (Doc. 36); 9th Cir. Order (Doc. 44) (denying certificate of

appealability). Unless the Ninth Circuit authorizes Davis to file a second § 2255 motion, this Court lacks jurisdiction to consider one. *See Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

A certificate of appealability is denied. Davis does not make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2), and reasonable jurists would agree this Court lacks jurisdiction, *see Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Accordingly, IT IS HEREBY ORDERED:

1. Davis’s motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 48) is DISMISSED for lack of jurisdiction.
2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Davis files a Notice of Appeal;
3. The Clerk of Court shall ensure that all pending motions in this case and in CV 17-85-GF-BMM are terminated and shall close the civil file by entering a judgment of dismissal.

DATED this 29th day of August, 2017.



Brian Morris
United States District Court Judge